

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:11-CR-25
)	
DAVID MINER,)	(PHILLIPS / SHIRLEY)
)	
Defendant.)	

ORDER

This case is before the Court on the Defendant's Motion for Waiver of Fee [Doc. 100]. See 28 U.S.C. § 636(b). The District Court entered a Judgment [99] of conviction on May 31, 2013. On June 11, 2013, the Defendant filed a Notice of Appeal [Doc. 101], stating that he appeals from the final judgment of conviction in his case. In the instant motion, the Defendant moves the Court to waive the filing fee in this case because he is financially unable to pay it.

Criminal defendants deemed indigent for the purpose of receiving appointed counsel to defend them at trial are also permitted to proceed without payment of fees and costs on appeal:

A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization[.]¹

Fed. R. App. P. 24(a)(3). At the inception of the present case, the Court found [Doc. 8], upon review

¹Rule 24(a)(3) provides two exceptions to the general rule that a party represented by court-appointed counsel may proceed in forma pauperis on appeal: (1) when the district court certifies in writing that the appeal is not made in good faith or (2) when a statute directs that a party may not proceed in forma pauperis. Fed. R. App. P. 24(a)(3)(A)-(B). The Court finds that neither of these exceptions applies in this case.

of the Defendant's sworn Financial Affidavit, that the Defendant qualified for appointed counsel. The Court appointed Assistant Federal Defender Kim A. Tollison to represent the Defendant. Mr. Tollison retired during the pendency of the case, and Assistant Federal Defender Laura Davis represented the Defendant. On December 5, 2012, District Judge Phillips substituted and appointed [Doc. 73] Attorney Lowell H. Becraft, Jr., who was permitted to appear *pro hac vice* [Doc. 66], to represent the Defendant. Attorney Becraft represented the Defendant at trial and through the remainder of his case.² The Court finds that the Defendant has been continuously represented by appointed counsel. Accordingly, the Defendant is authorized to proceed on appeal without prepayment of fees or costs, and his motion to do so [**Doc. 100**] is **GRANTED**.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge

²On May 28, 2013, Attorney Becraft filed a motion [Doc. 97] to be appointed to represent the Defendant on appeal. At the May 29, 2013 sentencing hearing, Judge Phillips denied the motion as not properly before this Court and instructed Mr. Becraft to seek appointment from the Court of Appeals for the Sixth Circuit.